

PROGRESS REPORT NO. 3

MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN

February 24, 2003

Work Group Members:

Judge Hilda R. Gage
Chief Judge Pro Tem Michael R. Smolenski
Chief Judge William C. Whitbeck
Judge Brian K. Zahra
Kim Hauser
Mary Lu Hickner
Sandra Mengel
Larry Royster

Contributing Judges:

Judge Richard A. Bandstra
Judge Jessica R. Cooper
Judge Richard A. Griffin
Judge Kirsten Frank Kelly
Judge Patrick M. Meter
Judge Michael J. Talbot
Judge Helene N. White

I. EXECUTIVE SUMMARY

In March of 2002, the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has issued Progress Reports No. 1 and 2. This Progress Report No. 3 sets out data covering all of 2002, with particular emphasis on the months of October, November, and December. The public can access each of the four reports on the Court's web site at <http://courtofappeals.mijud.net/>.

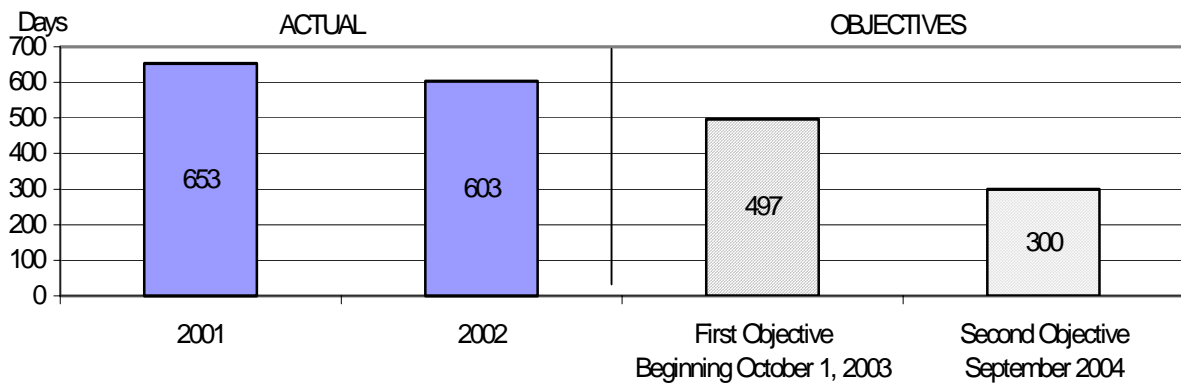
To meet the Court's long-range goal of disposing of all appeals within 18 months of filing, the Court adopted two objectives:

- *First*, the Court determined that it would need to reduce the time to process an opinion case from its 2001 level of 653 days to approximately 497 days. The Court designed a number of actions, to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003, to meet this first objective.
- *Second*, the Court determined that it would then need to further reduce the time it takes to process an opinion case to approximately 300 days, commencing October 1, 2003. This, in essence, means that the Court must eliminate the component in processing time that we call the "Warehouse." The time spent in the Warehouse extends from the date an opinion case is ready for research, through the date it is sent to the Research Division, until the date it is actually assigned to a research attorney. Overall, nothing substantive happens to a case in the Warehouse; it simply sits. The basic deterrent to eliminating the Warehouse is the capacity of the Court's Research Division. The current staffing levels of the Research Division mean that it cannot, by itself, appreciably reduce the wait in the Warehouse, whose very existence derives from the fact that the Research Division is inadequately staffed. Conversely, if the Court were able to increase the number of attorneys in the Research Division, it would reduce the wait in the Warehouse.

Progress Report No. 3 documents the Court's progress toward its objectives. Summarizing the data:

- **Overall** In 2002, as the Chart below shows, the Court made significant progress in reducing the overall processing time for an opinion case. In 2001, the time for processing opinion cases was an average of 653 days from filing through the issuance of an opinion. In 2002, the Court reduced that time by 50 days to an average of 603 days.

OVERALL PROCESSING TIME



There are three basic points that are important with respect to this accomplishment:

- This 50-day reduction represents nearly two months of time that the parties in an opinion case would otherwise have to wait before their appeal is resolved. For a court whose core mission is to resolve the cases before it with due deliberation *and* with due speed, this reduction represents a considerable benefit to Michigan citizens. Whether or not they have cases pending before the Court, each citizen of our state benefits when the judicial system works quickly and fairly to resolve disputes brought before it.
 - Nevertheless, the Court must, for cases filed on and after October 1, 2003, further reduce its overall processing time by another 106 days in order to meet its first objective.
 - Thereafter, the Court must reduce its overall processing time by an additional 197 days in order to meet its second objective.
- **Warehouse** In 2001, the average time that an opinion case spent in the Warehouse was 271 days. In 2002, principally by routing cases directly to the Judicial Chambers rather than through the Research Division, the Court reduced that time 10 days to an average of 261 days.
 - **Intake** In 2001, the average time that an opinion case spent in the Intake was 260 days. In 2002, the average time was reduced by 20 days to 240 days. Note that many of the opinion cases disposed of in 2002 reached, and passed through, the Intake stage *before* the adoption of the Court's delay reduction plan. Thus, while the 20-day reduction of time in Intake is a positive development, it cannot be ascribed to the Court's delay reduction efforts to date. The bulk of the reduction of time in the Intake phase will come from the court rule amendments that we have submitted to the Supreme Court. These amendments will, if adopted, reduce the time in intake to an average of 173 days for cases filed on and after September 1, 2003. The proposed amendments are currently pending before the Supreme Court and when they are published for comment, interested persons may file comments as outlined on the Supreme Court's web site.

The Court recognized early on that it was unrealistic to expect increased appropriations in FY 2002 or FY 2003 to fund its delay reduction efforts. In fact, the Court's operating budget

was *reduced* during both of these fiscal years. Despite these past budget cuts, the Court here announces a *50-day reduction* in the average time that opinion cases spent on appeal in 2002 as compared to 2001. This achievement is certainly salutary in its own right. It also raises the question of what the Court could achieve for the citizens of Michigan if there were sufficient resources to process cases through the Research Division so quickly that no case would sit in the Warehouse. As we work through the first six months of 2003, we will be raising that question for the thoughtful consideration of every group that interrelates with us on the important work that the citizens of this state rightfully expect us to perform.

II. OVERVIEW

A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 cases by opinion. On average, the Court disposed of these opinion cases within 653 days from the date of filing. The Judges of the Court unanimously determined that this figure was not within acceptable limits and adopted a comprehensive delay reduction plan at a meeting held on March 8, 2002. On August 15, 2002, the Court issued its first progress report covering the first six months of 2002. On November 20, 2002, the Court issued its second progress report covering the first nine months of 2002, with particular emphasis on the months of July, August, and September 2002. This third progress report covers all of 2002, with particular emphasis on the months of October, November, and December of 2002.

B. Goals and Objectives

1. Long-Range Goal

On March 8, the Judges of the Court adopted an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal was to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on and after October 1, 2003.

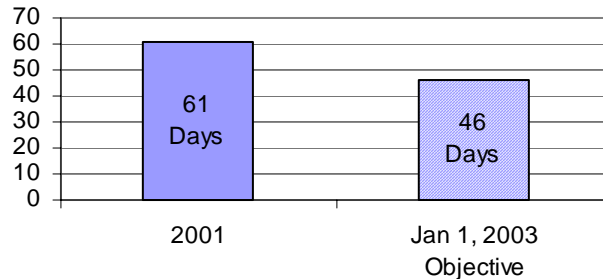
2. First Objective

To achieve its long-range goal, the Court determined that it would first need to reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days by 156 days, to approximately 497 days.¹ The Court then determined that to meet this first objective it would:

¹ In its second progress report, the Court noted that its staff had designed and implemented a computer program that significantly increases the accuracy and availability of the data underlying its delay reduction plan. In this progress report, the Court has updated its objectives to reflect the revised data that it has utilized, and has made further corrections to these data.

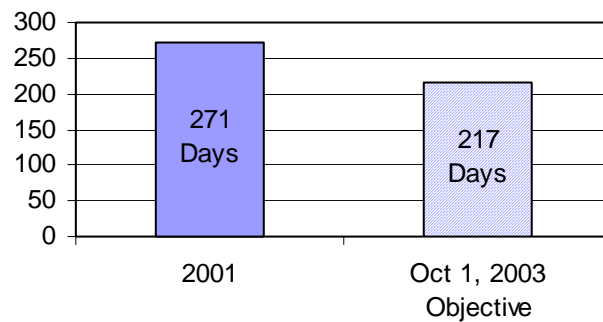
- By January 1, 2003, reduce the average time in the Judicial Chambers from its 2001 level of 61 days for opinion cases by 15 days, to 46 days. Graph 1 illustrates this reduction

Graph 1
First Objective For The Judicial Chambers



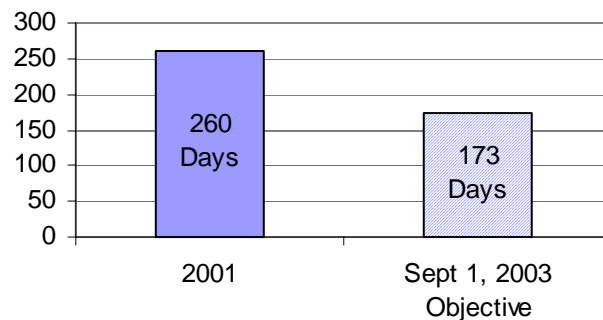
- By October 1, 2003, reduce the average wait in the “Warehouse” from its 2001 level of 271 days for opinion cases by 54 days, to 217 days. Graph 2 illustrates this reduction

Graph 2
First Objective For The Warehouse



- Commencing September 1, 2003, reduce the average time in Intake from its 2001 level of 260 days for opinion cases by 87 days, to 173 days for those cases filed on and after September 1, 2003. Graph 3 illustrates this reduction

Graph 3
First Objective For Intake



Overall, these actions would, if successful, reduce the average time it takes to process an opinion case through the Court to 497 days, a reduction of approximately 24% from the average of 653 days in 2001. To achieve this overall reduction, the Court has determined to take a three-pronged approach to reduce delay: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases much more quickly out of the Warehouse, basically by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules, to become effective September 1, 2003 (for cases filed on or after that date), to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003.

3. *Second Objective*

Reducing the overall processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing, commencing with those cases filed on and after October 1, 2003. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. This, in essence, means that the Court must eliminate the Warehouse. The basic deterrent here is the capacity of the Research Division. The current staffing levels of the Research Division mean that it cannot, by itself, appreciably reduce the wait in the Warehouse, whose very existence derives from the fact that the Research Division is inadequately staffed. Conversely, and simply put, if the Court were able to increase the number of attorneys in the Research Division, it would reduce the wait in the Warehouse.

Recognizing this fact, the Delay Reduction Work Group recommended that the Court seek funding in FY 2004 for an additional seven to ten attorneys in the Research Division. This would require an additional appropriation in FY 2004 of approximately \$470,000 to \$670,000. Were this appropriation to be available on October 1, 2003, commencing with cases filed after that date, by the end of FY 2004 there would be no Warehouse and the average time to decide an opinion case would be approximately 300 days. With the achievement of this second objective, the Court would be able to reach its long-term goal of disposing of 95% of all cases filed with the Court within 18 months of such filing.

III. RESULTS THROUGH DECEMBER OF 2002 AS COMPARED TO FIRST OBJECTIVE

A. Processing Times

1. *Overall*

As Chart 1 shows, in 2001 the overall time it took to process an opinion case through the Court was 653 days.

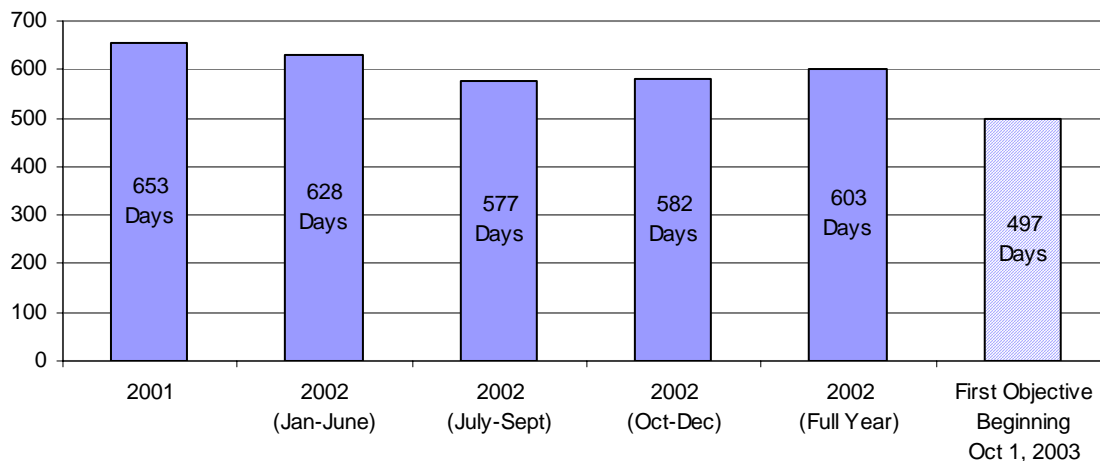
- In the period from January to June of 2002, this time was 628 days.
- In the period from July to September of 2002, this time was 577 days.
- In the period from October to December of 2002, this time was 582 days.
- For the full year of 2002, this time was 603 days.
- Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective.

Chart 1

	2001	2002 Jan-June	2002 July - Sept	2002 Oct -Dec	2002 Full Year
Intake	260	247	229	236	240
Warehouse	271	276	243	251	261
Research	61	62	65	60	62
Judicial Chambers	61	43	40	35	40
Totals	653	628	577	582	603

Graph 4

Overall Time In Processing Compared To First Objective

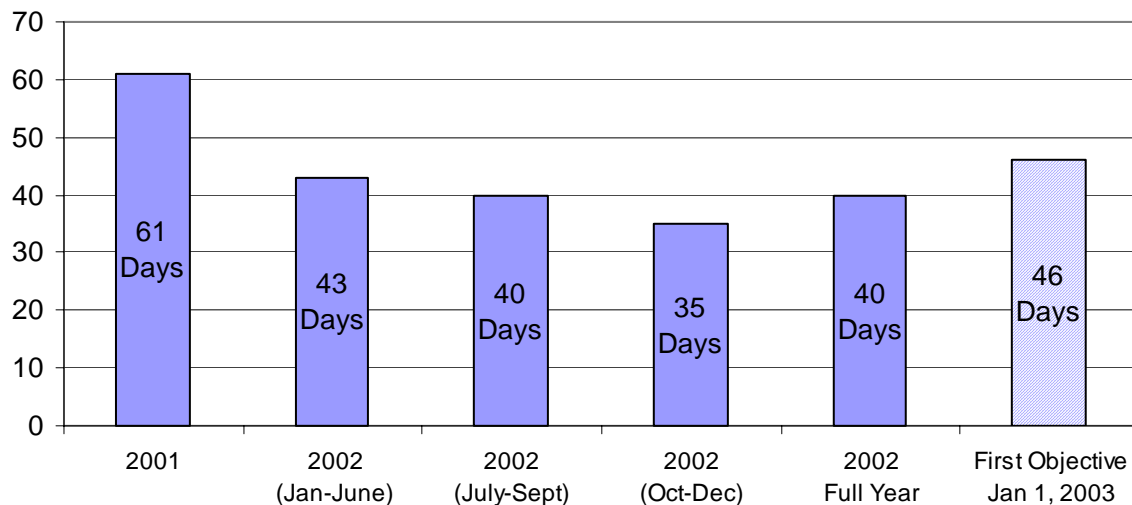


2. *Judicial Chambers*

As Chart 1 shows, in 2001 the time it took to process an opinion case through the Judicial Chambers was 61 days.

- In the period from January to June of 2002, this time was 43 days.
- In the period from July to September of 2002, this time was 40 days.
- In the period from October to December of 2002, this time was 35 days.
- For the full year of 2002, this time was 40 days.
- Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As the graph shows, the Court has actually exceeded its objective by 11 days.

Graph 5
Processing Time In Judicial Chambers Compared To First Objective

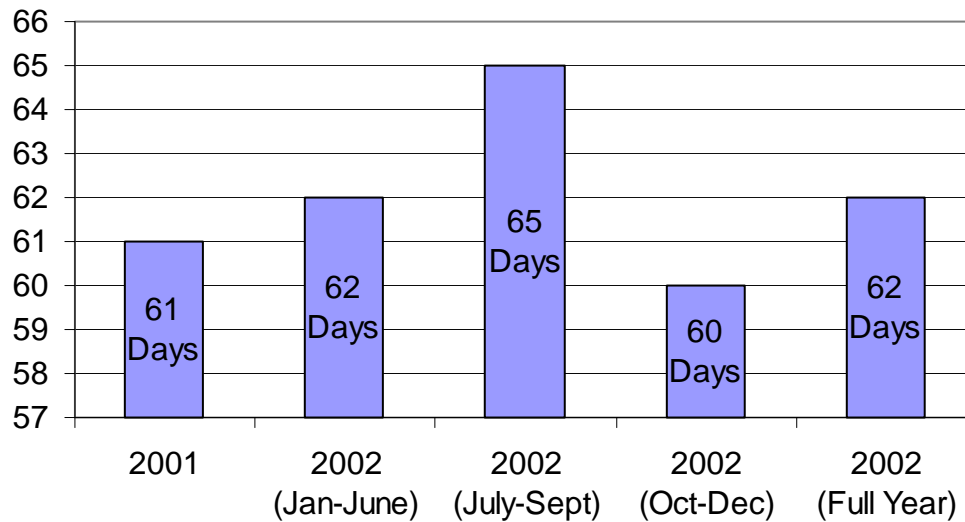


3. *Research*

As Chart 1 shows, in 2001, the time it took to process an opinion case through the Research Division was 61 days.

- In the period from January to June of 2002, this time was 62 days.
- In the period from July to September of 2002, this time was 65 days.
- In the period from October to December of 2002, this time was 60 days.
- For the full year of 2002, this time was 62 days.
- Graph 6 shows these increases and reductions on a comparative basis.

Graph 6
Processing Time In Research Division

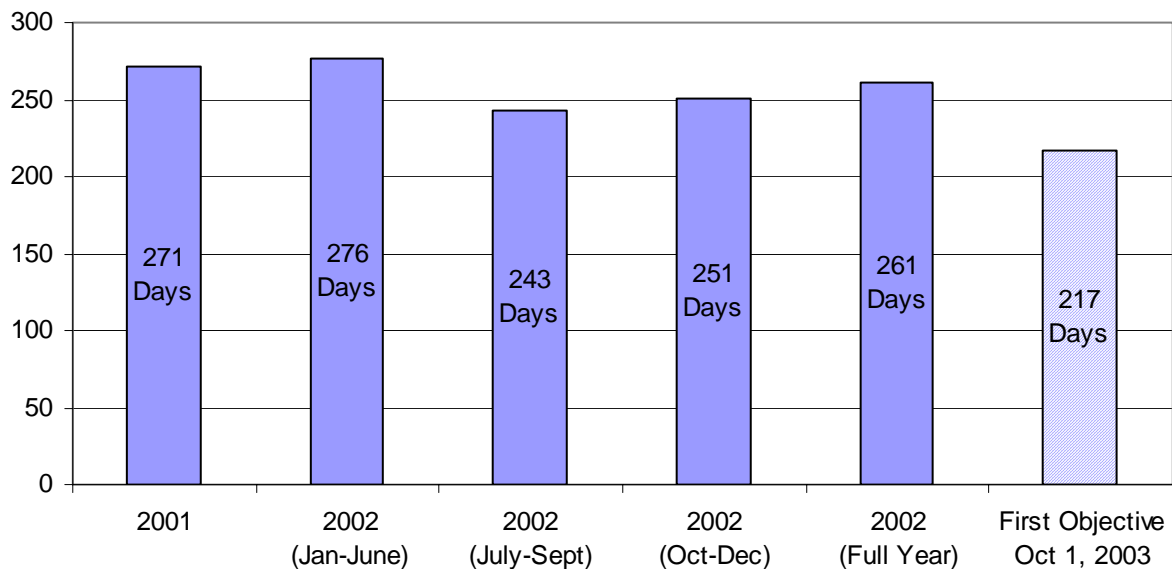


4. Warehouse

As Chart 1 shows, in 2001, the time spent in the Warehouse was 271 days.

- In the period from January to June of 2002, this time was 276 days.
- In the period from July to September of 2002, this time was 243 days.
- In the period from October to December of 2002, this time was 251 days.
- For the full year of 2002, this time was 261 days.
- Graph 7 shows these increases and reductions on a comparative basis and relates them to the Court's first objective.

Graph 7
Processing Time In The Warehouse Compared To First Objective

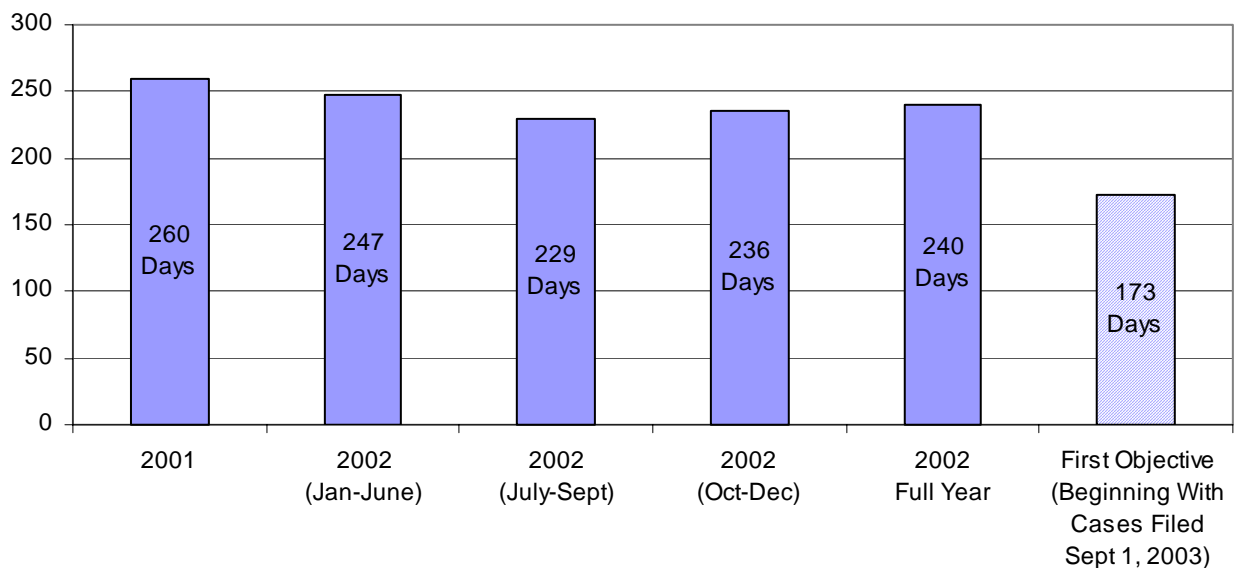


5. Intake

As Chart 1 shows, in 2001 the time it took to process an opinion case through Intake was 260 days.

- In the period from January to June of 2002, this time was 247 days.
- In the period from July to September of 2002, this time was 229 days.
- In the period from October to December of 2002, this time was 236 days. Any significant further reductions are necessarily contingent on the proposed changes in the court rules, to become effective on September 1, 2003.
- For the full year of 2002, this time was 240 days.
- Graph 8 shows these reductions on a comparative basis and relates them to the Court's first objective.

Graph 8
Processing Time In Intake Compared To First Objective



B. Case Differentiation

Chart 2 shows the overall situation for cases that the Court disposed of by opinion in 2001, arrayed according to major case types.

CHART 2
2001

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	260	271	229	280	192	187
Warehouse	271	290	214	331	60	56
Research	61	61	62	63	56	52
Judicial Chambers	61	72	27	66	43	30
Total	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion from January to June of 2002, arrayed according to major case types.

CHART 3
Jan-June 2002

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	247	257	209	262	187	186
Warehouse	276	292	210	327	68	67
Research	62	57	79	63	57	57
Judicial Chambers	43	49	20	47	28	20
Total	628	655	518	699	340	330

Chart 4 shows the overall situation for cases that the Court disposed of by opinion from July to September of 2002, arrayed according to major case types.

CHART 4
July-Sept 2002

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	229	250	201	249	160	158
Warehouse	243	287	185	298	50	50
Research	65	62	68	63	69	72
Judicial Chambers	40	54	20	43	27	22
Total	577	653	474	653	306	302

Chart 5 shows the overall situation for cases that the Court disposed of by opinion from October to December of 2002, arrayed according to major case types.

CHART 5
Oct-Dec 2002

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	236	252	204	249	183	188
Warehouse	251	289	172	299	47	44
Research	60	61	60	56	78	80
Judicial Chambers	35	43	17	38	20	17
Total	582	645	453	642	328	329

Chart 6 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2002, arrayed according to major case types.

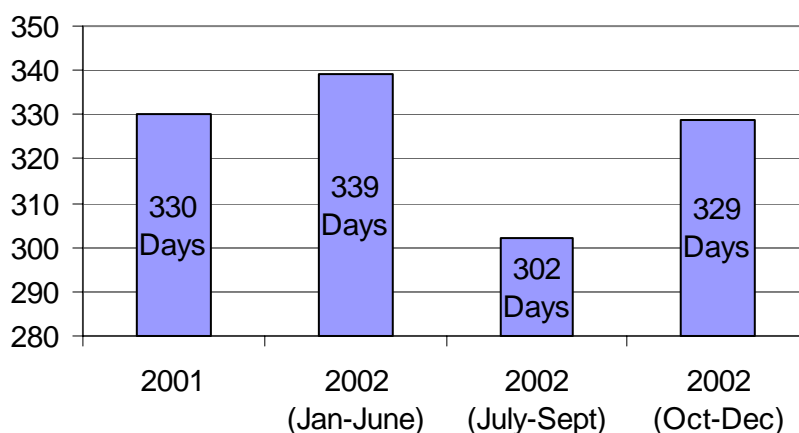
CHART 6
Full Year 2002

	Overall Average	Regular/ Complex	Summary	Non- Expedited	Expedited	Custody/TPR
Intake	240	254	205	255	178	178
Warehouse	261	290	189	312	58	56
Research	62	59	69	61	66	67
Judicial Chambers	40	49	19	44	26	20
Total	603	652	482	672	328	321

C. Dependency Appeals

The Court has also directed special attention to dependency appeals. Those are appeals arising from trial court orders terminating parental rights due to neglect or abuse and appeals arising from trial court orders or opinions involving custody of minor children in domestic relations cases. In 2001, it took 325 days, on average, to dispose of such cases by opinion. The Court's delay reduction plan will reduce this time, on average, by 12 days. The Court has made further recommendations that will reduce this time by an additional 28 days. These recommendations include an expansion of the Court's contract attorney program by adding an additional six to eight contract attorneys, at an estimated \$35,000 to \$50,000 in FY 2004. This action, alone, will reduce the time it takes to dispose of dependency appeals by 21 days. Graph 9 shows the situation with respect to dependency appeals.

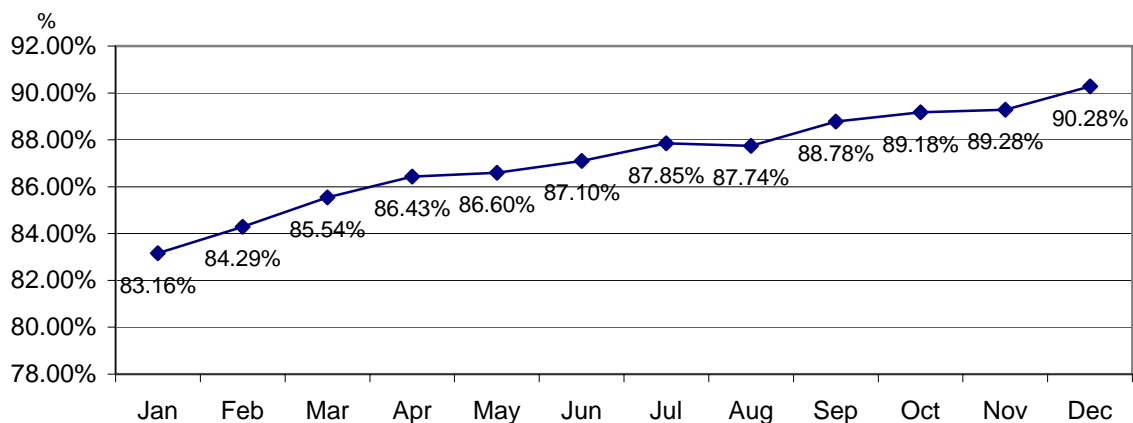
Graph 9
Dependency Appeals



D. Case Age Percentages

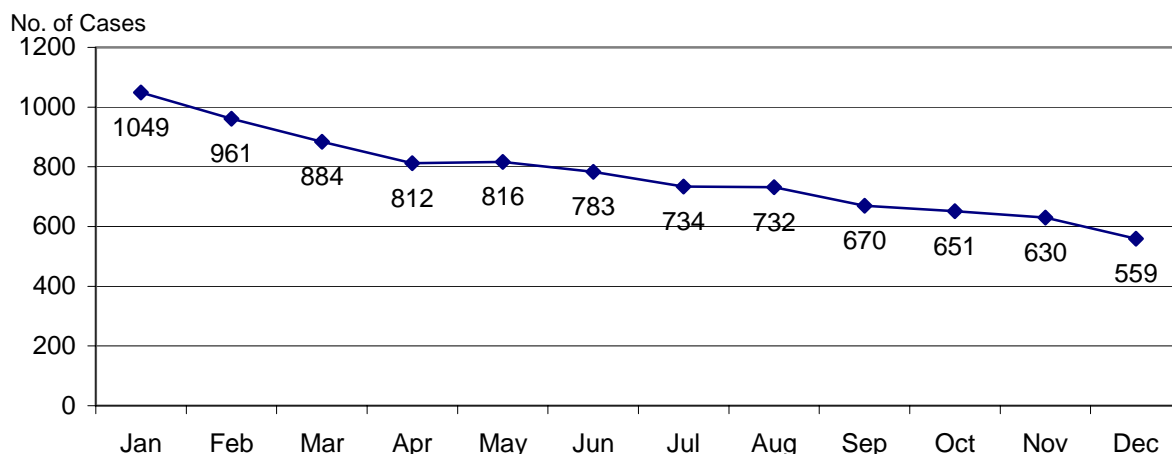
There is another way of looking at the Court's delay reduction progress over the past 12 months and that is by an examination of case age percentages. The Court defines a case age percentage as the percentage of pending cases that are 18 months of age or less from the date of filing. (For example, a case that is filed on January 1, 2002, will be 18 months old on July 1, 2003). At the close of each month, the Court calculates the age of each pending case and reports these ages. Case age percentages are not a good indicator of case processing rates for delay reduction purposes; indeed, in 2001 the Court disposed of only 24.8% of its opinion cases within 18 months of filing while the monthly case age percentages were in the 80% range. Case age percentages do, however, give a rough estimate of the *trend* in dispositions. For 2002, this trend was very good, as Graph 10 indicates.

Graph 10
Case Age Percentages – 2002
(Percentage of Cases That Are No More Than 18 Months Old)



Conversely, in 2002 the *number* of cases that were 18 months of age or more decreased materially, as Graph 11 shows.

Graph 11
Case Age Numbers – 2002
(Number of Cases That Are More Than 18 Months Old)



IV. CONCLUSION

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that would reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. During 2002:

- The Court reduced the overall time it takes to dispose of an opinion case by 50 days, from the 2001 level of 653 days to the 2002 level of 603 days. The Court's first objective is to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. Thus, the Court will need to shorten the time it takes to dispose of an opinion case by another 106 days in order to meet its first objective.
- The Court reduced the time a case spends in the Judicial Chambers by 21 days, from the 2001 level of 61 days to the 2002 level of 40 days. The Court therefore achieved — indeed, it exceeded — its objective of reducing the time in the Judicial Chambers to 46 days by January 1, 2003. Thus, the Court has met, and exceeded, its objective with respect to the Judicial Chambers.
- The time a case spends in Intake has been reduced by 20 days, from the 2001 level of 260 days to the 2002 level of 240 days. The Court's objective is to reduce the time a case spends in Intake to 173 days for those cases filed on and after September 1, 2003. Thus, through the adoption of changes in the court rules, this time must be further reduced by another 67 days in order to begin meeting that objective for cases filed on and after September 1, 2003.
- The Court reduced the time a case waits in the Warehouse by 10 days, from the 2001 level of 271 days to the 2002 level of 261 days. The Court's objective is to reduce the wait in the Warehouse to 217 days by October 1, 2003. Thus, the Court will need to reduce the time a case waits in the Warehouse by another 44 days in order to meet its first objective.
- The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court has actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, in order to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court will, commencing October 1, 2003, need to further reduce the time it takes to process an opinion case to approximately 300 days. There is only one way to meet the Court's second objective and that is by adding attorneys to the Research Division and thereby drastically reducing or eliminating the Warehouse.
- The Court has reduced the overall time it takes to process a dependency appeal by 4 days, from the 2001 level of 325 days to the 2002 level of 321 days. Adding an additional six to eight contract attorneys, at an estimated cost of \$35,000 to \$50,000 in 2004, would allow the Court to further expedite an additional 80-90 dependency appeals per year, thereby reducing the average time for disposition by another 21 days.

Chart 7 summarizes the further progress that will be needed to meet the Court's first objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to 497 days commencing on September 1, 2003.

CHART 7
September 2003 Objective

	2001	2002	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
Intake	260	240	20	173	67
Warehouse	271	261	10	217	44
Research	61	62	(1)	61	1
Judicial Chambers	61	40	21	46	(6)
Total	653	603	50	497	106

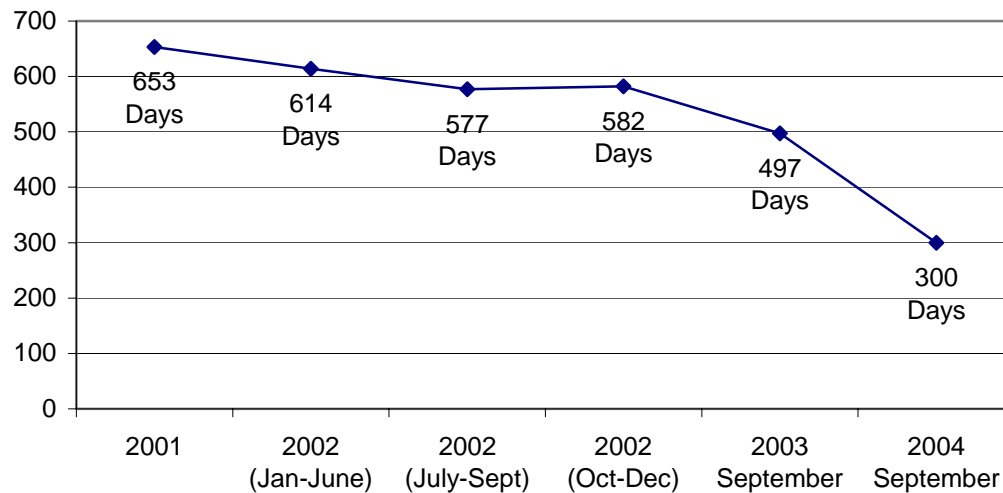
Chart 8 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days by September of 2004.

CHART 8
September 2004 Objective

	2001	2002	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
Intake	260	240	20	173	67
Warehouse	271	261	10	0	261
Research	61	62	(1)	61	1
Judicial Chambers	61	40	21	46	(6)
Total	653	603	50	280	323

Graph 12 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made from January through June of 2002, the progress the Court made from July through September of 2002, the progress from October to December of 2002, the first objective for September of 2003, and the second objective for September of 2004.

Graph 12
Progress Toward Objectives



As mentioned in previous progress reports, the Court has established a solid base upon which it can build over the next year so that it will be in a position to achieve its long-range goal of deciding 95% of all appeals within 18 months of filing. The Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. Existing Court policies and procedures are focused on ensuring the opportunity for due deliberation. The Court's delay reduction plan will ensure due speed through the significant reduction of delay on appeal. It is part of the Court's core mission and is, and shall remain, a first priority of the Court.